83 - 1833



No.

In the

# Supreme Court of the United States

October Term, 1983

AUGUSTUS J. SIMMONS,
*Petitioner*,

v.

UNITED STATES OF AMERICA;
FEDERAL AVIATION ADMINISTRATION;
J. LYNN HELMS, Administrator,
Federal Aviation Administration;
STATE OF CONNECTICUT;
CONNECTICUT DEPARTMENT OF TRANSPORTATION;
J. WILLIAM BURNS, Commissioner,
Connecticut State Department of Transportation,
*Respondents*.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Augustus J. Simmons
*Pro Se*

65 pp

## Questions Presented for Review

1. Whether the courts below erred in dismissing a private property owner's action to quiet title and for ejectment against the FEDERAL AVIATION ADMINISTRATION, and its agents as being barred by sovereign immunity under *Malone v. Bowdoin*, 396 U.S. 643 (1962).

2. Whether a private property owner's action for trespass against the FEDERAL AVIATION ADMINISTRATION is barred by the statute of limitations as set out in 28 U.S.C. §2401 where the STATE has acted as agent for the FEDERAL AVIATION ADMINISTRATION and has repeatedly acted to cloud the title to the property, and continues to so act to date.

3. Whether a private property owner's action to enforce his rights and for an injunction against the FEDERAL AVIATION ADMINISTRATION or the STATE under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. §4601 et. seq.] and the regulations promulgated thereunder and under the Administrative Procedures Act [5 U.S.C. §701 et. seq.] should be dismissed for lack of standing to sue.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

### Opinions Below

The District Court Ruling on the Federal Defendants' Motion to Dismiss AUGUSTUS J. SIMMONS' Complaint, dated February 7, 1983, is printed at pages A14 *infra*, and is not officially reported. The Informal Opinion of the United States Court of Appeals for the Second Circuit, dated June 9, 1983, is printed at pages A11 *infra*, and is not officially reported. This Court of Appeals Opinion was an interlocutory appeal from the District Court Ruling in which the case was dismissed without prejudice.

The District Court Orders dismissing AUGUSTUS J. SIMMONS' Complaint, dated August 16, 1983, is printed at page A9 *infra*, and is not officially reported. The District Court Order denying SIMMONS' Motion for an Injunction, dated August 17, 1983, is printed at pages A8 *infra*, and is not officially reported.

The original District Court Judgment dismissing AUGUSTUS J. SIMMONS' Complaint, dated August 24, 1983, is printed at page A6 *infra*, and is not officially reported.

The Judgment of the United States Court of Appeals for the Second Circuit, dated December 20, 1983, is printed at pages A3 *infra*, and is not officially reported. The Judgment of the Court of Appeals affirmed the Judgment of the District Court. The Court of Appeals decision denying SIMMONS' petition for rehearing, dated February 10, 1984, is printed at pages A1 *infra*, and is not officially reported.

**Jurisdiction**

The date of the order and judgment of the United States Court of Appeals for the Second Circuit sought to be reviewed is February 10, 1984, which is also the date of its filing. The jurisdiction of this court is invoked under 28 U.S.C. §1254 (1) and under Rule 17.1 of the United States Supreme Court Rules.

**Statutes and Regulations Involved**

(Set out in Appendix H)

The Administrative Procedure Act [5 U.S.C. §701, and 5 U.S.C.§702]

28 U.S.C. §1346(a)(2) [United States as Defendant]

The Federal Tort Claims Act [28 U.S.C. §§1346(b), 2401, and 2674]

Real Property Quiet Title Actions [28 U.S.C.§§1346(f) and 2409a]

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. §4601 et. seq.]

49 U.S.C. §2208 [Airport Development]

Regulations under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
HUD Regulations [24 C.F.R. §42.127]
FAA Regulations [49 C.F.R. Part 25]

**Statement of the Case**

AUGUSTUS J. SIMMONS, the Petitioner herein, commenced this action against the UNITED STATES OF AMERICA, and the FEDERAL AVIATION ADMINISTRATION (FAA herein), and the STATE OF CONNECTICUT and the CONNECTICUT DEPARTMENT OF TRANSPORTATION (STATE herein), all Respondents herein, in the United States District Court for the District of Connecticut, Hartford Division, on October 15, 1981, seeking to quiet title, to eject the FAA and STATE from three parcels of land, and to recover damages for trespass and for expenses covered under the Relocation Assistance Act. By motion filed April 29, 1983, SIMMONS sought to enjoin the FAA from disbursing federal funds for Bradley International Airport until the STATE acquires title to SIMMONS' land occupied by the airport. Federal court jurisdiction was asserted under 28 U.S.C. §1346(f) [U.S. as Defendant in Quiet Title Action], under 28 U.S.C. §1331 [Federal Question], under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et. seq., under the Administrative Procedures Act, 5 U.S.C. §§701 and 702, under the Federal Tort Claims Act, 28 U.S.C. §1346(b), under the Tucker Act, 28 U.S.C. §1346(a)(2), and under pendent jurisdiction.

On or about February 28, 1962, the STATE OF CONNECTICUT filed a taking on the land records of the Town of East Granby, Connecticut at Volume 38 Page 596. The land was at that time owned by AUGUSTUS J. SIMMONS' mother, ANASTASIA SIMMONS. On November 11, 1964, MRS. SIMMONS sold all of the property that is the subject of this dispute to AUGUSTUS J.

SIMMONS. On October 25, 1967, SIMMONS prevailed in a state court action and had the taking adjudicated illegal. In 1967, SIMMONS began an action for ejectment, trespass, and to quiet title against the STATE in state court. (This action would continue to 1977.) On January 25, 1968, the STATE again filed a taking on the land records at Volume 46 page 113. On March 30, 1971, SIMMONS again prevailed in the state court to have the second taking declared illegal.

In 1971, SIMMONS brought an action in Federal District Court against the STATE and various of its officials under the Civil Rights Act, 28 U.S.C. §1983. In its decision of January 19, 1973, reported at 472 F.2d 509 (2nd Cir., 1973) the United States Court of Appeals for the Second Circuit, on appeal from dismissal of the complaint, reversed and remanded with orders to stay the action in the District Court pending resolution of the boundary dispute in state court.

In November 1974, a permanent security fence was erected around the airport and SIMMONS' land. In 1974, SIMMONS brought an action in the District Court against both the STATE and the FAA for an Injunction against Federal funding. The injunction was denied on November 5, 1974, without prejudice and with the added note that "In the event that the state court unduly delays the litigation, the plaintiff may renew his claim." Ruling on Plaintiffs Motion for a Preliminary Injunction, J. Clarie, dated November 5, 1974, Case No. H 74-148.

From December 1974 to February 1976, SIMMONS removed the fence and erected no trespassing signs on at least four occasions and was arrested each time. SIMMONS was tried on at least one occasion and was acquited by a jury. In the ejectment and quiet title action, a trial was had for thirty days between May 1, 1975 and April 30, 1976. On February 26, 1976, the STATE was granted an injunction to bar SIMMONS from forcibly removing the fence from the land. On January 11, 1977, SIMMONS prevailed in the quiet title action in the lower court and was granted damages for trespass and the STATE was to quit the land within one hundred days. SIMMONS moved to dissolve the injunction but his motion was denied on April 15, 1977. The STATE appealed the lower court

decision of January 11, 1977, and did not withdraw it until December 2, 1981, after the instant action was brought.

On December 13, 1977, the STATE presented a proposal, to which SIMMONS agreed, to open all judgments entered regarding the land and to consolidate those and all ongoing actions including those actions in the Federal Court. On January 4, 1978, an agreement was entered into between SIMMONS and the STATE to pay SIMMONS Three Hundred Eighty-Five Thousand ($385,000) Dollars in return for all claims outstanding and a deed to the property dating back to 1964. The STATE deposited the money into escrow, though not until September of 1978, but SIMMONS neither executed the deed nor withdrew the money.

On June 7, 1982, Assistant Attorney General Victor Feingold for the STATE OF CONNECTICUT, stated that the stipulated judgment merely amounted to "a simple agreement to sell land for a price certain. Now, thereafter, no action was brought to even enforce this agreement...[and] the statute of limitations have passed and the State of Connecticut is barred from enforcing the agreement by specific performance." Transcript of June 7, 1982, State of Connecticut Case no. 163875, at 13-14.

On April 6, 1984, Robert Morrin, the Assistant Attorney General for the STATE OF CONNECTICUT was asked by telephone as to what position the STATE was taking in regards to the property and ongoing litigation. His reply was that the STATE owned the land pursuant to the stipulated judgment entered January 4, 1978. On February 3, 1984, SIMMONS filed in the State Court for a declaratory judgment in the action comprising all of the actions as consolidated. This motion has been denied and is currently being appealed.

SIMMONS has given notice to the FAA of his claims on a number of occasions and in a number of different ways. On October 30, 1964, and September 19, 1967 (both Exhibit #3), SIMMONS wrote letters to the FAA notifying it that he claimed the property as his own and that the FAA was to quit possession of it. In response, the FAA referred SIMMONS to the CONNECTICUT DEPART-

MENT OF AERONAUTICS as the Department responsible for making the necessary purchase. On April 28, 1971 (Exhibit #3), SIMMONS again wrote the FAA claiming title to the land and requesting that the FAA cease funding of the airport pursuant to 49 U.S.C. §2208 (formerly §1716(c)). The FAA responded by stating that it declined to cease funding because of the importance of the airport.

On February 13, 1982, SIMMONS wrote the FAA notifying it that beginning March 1, 1982, he would start charging One Hundred Thousand ($100,000.00) Dollars per month rent to the FAA for the use of his land. SIMMONS wrote the FAA again on February 15, 1983, and indicated that he was increasing the rent to Two Hundred Thousand ($200,000.00) Dollars per month beginning on March 1, 1983.

In April of 1982, SIMMONS discovered a grant agreement dated January 12, 1955, between the UNITED STATES OF AMERICA acting through the ADMINISTRATOR OF AERONAUTICS and the STATE OF CONNECTICUT in which the STATE agreed to acquire land for the FAA for an airport. At that same time, SIMMONS also discovered two amendments, a new grant agreement, a 1973 license and a lease. These documents were dated respectively, July 10, 1956, April 25, 1962, March 25, 1957 and June 1974, which were all entered into between the FAA and the CONNECTICUT DEPARTMENT OF TRANSPORTATION and all of which documents pertain to the lease of the land occupied by Bradley International Airport and include SIMMONS' property.

SIMMONS began his action in the District Court on October 15, 1981. Recovery by SIMMONS was sought against the FAA under the Federal Tort Claims Act, 28 U.S.C §§1346(b) and 2674, under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601, et. seq., 49 C.F.R. Part 25 [FAA Regulations under 42 U.S.C. §4601 et. seq.], under 28 U.S.C. §2409a [U.S. as Defendant in Quiet Title Action], 49 U.S.C. §2208 [Airport Development], and under various state statutes.

After a hearing in the District Court on the FAA's and the-STATE 's motions to dismiss, a ruling in favor of the FAA's motion was entered. SIMMONS, appearing pro se and not understanding the interlocutory nature of the ruling, took an appeal to the Court of Appeals for the Second Circuit which determined that it was without jurisdiction to hear the appeal and dismissed it.

SIMMONS had also moved in the District Court for a preliminary injunction to withhold federal funds for airport development at Bradley International Airport per 49 U.S.C §2208 until title to necessary property was acquired. The District Court dismissed the motion based upon the previous dismissal of the complaint against the FAA. An appeal was perfected to the Court of Appeals for the Second Circuit which remanded to the District Court without prejudice until final judgment was entered in the companion matter so that on appeal, the entire matter could be addressed at one time. Upon remand, the District Court again entertained the Motion For Injunctive Relief and rendered a determination based on mootness.

SIMMONS began a new action in the District Court on March 22, 1983, which elaborated on a number of the issues presented in his first action and which clearly set forth quiet title and ejectment claims. This second action was consolidated with the first action and the District Court rendered a Final Judgment dismissing the consolidated complaints against the FAA and the STATE. An appeal was perfected from the Judgment and from the Denial of Injunctive Relief to the United States Court of Appeals for the Second Circuit which rendered an opinion affirming the Judgment of the District Court. A Petition for rehearing before the Court of Appeals for the Second Circuit was perfected and that court denied the petition on February 10, 1984.

**Argument**

The decision of the United States Court of Appeals for the Second Circuit affirming the District Court's Judgment dismissing SIMMONS' complaint should be reviewed by this Court to resolve an apparent conflict between the Court of Appeals and legislation sponsored by the Justice Department as a result of a decision ren-

dered by this court in the case of *Malone v. Bowdoin*, 369 U.S. 643, 8 L.Ed.2d 168, 82 S.Ct. 980 (1962), concerning whether the UNITED STATES waives sovereign immunity to allow a suit for quieting title under 28 U.S.C. §2409a and for ejectment or injunction under 5 U.S.C. §702.

There is an apparent conflict between the Court of Appeals and this Court as to whether there is a waiver of sovereign immunity in quiet title actions, specifically brought under 28 U.S.C. §2409a. In *California v. Arizona*, 440 U.S. 59, 99 S.Ct. 919, 59 L.Ed.2d 144 (1979), this Court determined that the United States had waived its immunity to suit in actions to quiet title to land. Id. at 65, 99 S.Ct. at 923. In the instant case, the Court of Appeals determined that the United States had not waived its immunity to suit in actions to quiet title to land. The Court of Appeals, in failing to correct the error of the lower court, so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the lower court, as to call for an exercise of this Court's power of supervision.

The statutes granting specific waivers of sovereign immunity have undergone major revision in the last fifteen years as a result of legislation proposed by the Justice Department itself in an effort to clarify the law in this area and to make it more equitable. Both the legislative history and the case of *Malone, supra*, describe the law of sovereign immunity as being based upon "a series of Supreme Court decisions...[which] has created so much confusion that clear answers to these questions are not possible. The resulting patchwork is an intricate, complex, and illogical body of law." Roger C. Cramton, Hearing Before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary—United States Senate, dated June 3, 1970, S. 3568, at 22. As a result, Pub. L. 94-574 affecting 28 U.S.C. §2409a and Pub. L. 96-562 affecting 5 U.S.C. §702 were passed. The first allows a waiver of sovereign immunity for actions to quiet title and the second, making technical correction to the section, allows such a waiver for actions which grant specific relief, including quiet title and ejectment actions.

Since their passage in 1972, 28 U.S.C. §§1346(f) and 2409a have been the basis for a multitude of actions, and no attack on the statutes themselves has been sustained. To date, the statutes have been the basis of at least one action before this Court, *California, supra,* and numerous actions before the Courts of Appeals.

Even so, the Court of Appeals does not seem to have given consideration to SIMMONS' quiet title claim even though it was raised in his third amended complaint, dated November 4, 1982, in paragraphs 2, 20, and 26 and the factual basis for his claim was contained in Counts I and III comprising paragraphs 29 through 39. This issue was maintained on appeal in SIMMONS' Appellate brief, 83-6043, dated February 17, 1983, in paragraph 9 at page 6 of the Statement and under item J at page 33 of the Argument. The quiet title claim was extensively briefed at pages 1 through 14 of SIMMONS' brief in action 83-6257, dated November 16, 1983.

Since the passage of 5 U.S.C. §702 it also has been the basis for numerous actions seeking specific relief as opposed to damages, although it does not appear that in any of those actions, ejectment was specifically sued for. *Association of Data Processing Service Org., Inc. v. Camp,* 397 U.S. 150, 25 L.Ed.2d 184, 90 S.Ct. 827 (1970), review ruling of Comptroller of the Currency; *Elton Orchards, Inc. v. Brennan,* 508 F.2d 493 (1st Cir. 1974), review orders of Sec. of Labor; and *Eskra v. Morton,* 524 F.2d 9 (7th Cir. 1975), review probate determination of Board of Indian Appeals of the Dept. of Interior. However, ejectment was specifically cited as an action which could be brought under this section. Roger C. Cramton, Hearing Before the Subcommittee on the Judiciary—United States Senate, dated June 3, 1970, S.3568, at 31.

In addition to the above claims, SIMMONS also brought a claim under the Federal Tort Claims Act. In order for the court to have jurisdiction of such a claim, the claim must meet the requirements of 28 U.S.C. §2401. §2401 reads:

§2401. Time for commencing action against United States

(a) Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues.

* * *

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

This section requires notice to the federal agency. There is evidence that SIMMONS gave notice to the FAA in 1964, 1967, 1971, 1982 and 1983.

The court determined that SIMMONS' claim could have accrued only as late as 1974 and that his claim was barred by the statute of limitations. Ruling on Federal Defendants' Motion to Dismiss, Feb. 7, 1983, at 2-5. It is well settled that the period of limitation does not begin to run until the plaintiff has the right to enforce his cause of action. *Dore v. Kleppe*, 522 F.2d 1369 (5th Cir. 1975); *Walker v. United States*, 438 F.Supp. 251 (D.C. Ga. 1977). Under the facts presented to the District Court which are set out here, it is a question as to when SIMMONS' action accrued or whether it has accrued even yet. In the Appeals Court decision of January 19, 1973, on SIMMONS' action brought pursuant to 28 U.S.C. §1983, the court remanded the case to the District Court with orders to stay the action pending the resolution of the boundary dispute in the state court. The state court action was not decided until January of 1977 and then was reopened in December 1977. The stipulated judgment entered in January 1978 is of questionable significance and is the subject of an ongoing action for Declaratory Judgment in the state court.

SIMMONS' fourth and fifth claims are brought under the Uniform Relocation Assistance and Real Property Acquisition Poli-

cies Act of 1970 [42 U.S.C. §4601 et. seq.] and under the regulations promulgated thereunder and under the Administrative Procedures Act [5 U.S.C. §701 et. seq.]. He claims rights under 42 U.S.C. §4601 et. seq. including §4651, under 49 C.F.R. Part 25 and under 5 U.S.C. §§701 and 702. He also seeks to enjoin the FAA from granting further federal funding for Bradley International Airport to the STATE OF CONNECTICUT or its agencies until the STATE gives satisfactory assurances pursuant to 42 U.S.C. §§4655 and 49 U.S.C. §2208 and 49 C.F.R. §§25.45 and 25.59 and complies with all assurances which it has already given in the grant agreements and leases signed by the STATE and the FAA from 1974 on. The Grant Agreement of September 25, 1981, recites that the STATE "will comply with the requirements of Title II and Title III [§§4601-4655] of the Uniform Relocation Acquisition Policies Act of 1970 (P.L. 91-646). Grant Agreement dated September 25, 1981 between the STATE OF CONNECTICUT and the UNITED STATES OF AMERICA acting through the FAA, at 8. SIMMONS also seeks to enjoin the STATE, which has already received federal funding for the airport, from acting in a manner which is not in compliance with the written assurances given to the FAA under 42 U.S.C. §§4630 and 4655 and 49 C.F.R. §§25.45 and 25.59 and 49 U.S.C. §2208.

In *Bethune v. United States Dept. of Housing & Urban Dev.*, 376 F.Supp. 1074 (D.C. Mo. 1972), as in the case before us, the agency receiving the federal funds had given satisfactory assurances pursuant to 42 U.S.C. §4651 in the contract which it made with the federal agency, but it did not implement them. The property owners prevailed in their action and the federal agency was enjoined from paying federal money until the state agency performed the specific assurances which it had contracted to perform. The court's order was based on two separate grounds; 1) that the property owners were third party beneficiaries of the contract and, 2) that the duties imposed on the administrator of the federal agency by the statutes and regulations promulgated thereunder were enforceable.

In the District Court's Ruling on the Federal Defendants' Motion to Dismiss, the court found at 5, that SIMMONS did not claim to be a third party beneficiary and that such a claim would be contrary

to the thrust of his complaint. Although SIMMONS may not have artfully made this claim, he has continually pointed out that the STATE made such assurances in the agreements and leases which it signed with the FAA and that he has rights under the statute and regulations. Those rights include his rights under §§4627, 4628, 4633, 4651, 4653, 4654, 4655 and other sections. It seems incredible that his claiming status as a third party beneficiary and obtaining such rights could be considered contrary to his claim as presented.

Because of the continued failure of the STATE to comply with the assurances given by it, a question of fact is raised as to whether those same assurances given by the STATE, year after year since 1974, are any longer satisfactory where the FAA knows that the STATE has not complied. There are a number of cases allowing injunctions to issue where the STATE has not given satisfactory assurances. *Lathan v. Volpe*, 455 F.2d 1111 (9th Cir. 1971); *Keith v. Volpe*, 352 F.Supp. 1324 (D.C. Cal. 1972) aff'd 506 F.2d 696 (9th Cir.), cert. den. 420 U.S. 908, 42 L.Ed.2d 837, 95 S.Ct. 826; *Jones v. District of Columbia Redevelopment Land Agency*, 162 App. D.C. 366, 499 F.2d 502 (1974). In *Jones, supra*, where a private property owner sought an injunction, the injunction was granted against the state agency rather than the federal agency because the funds had already been disbursed by the federal agency and the court found that this was the only means available to insure that the funds were not used improperly. In the present case, the STATE receives a new allotment of funds each year so that they have funds that can be applied improperly and yet still await the following year's funds.

The "plain language" in the statute referred to by the District Court in its Ruling on the Federal Defendants Motion to Dismiss, dated February 7, 1983, at p. 5, refers to the Government's Memorandum of Law in Support of Motion to Dismiss Third Amended Complaint [filed, December 21, 1982] which, at p. 5, cites 42 U.S.C. §4602. §4602(a) states:

> The provisions of section 4651 of this title create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

Although this section creates no rights in §4651, it does not affect the rights given under any other section of the Act nor does it preclude these rights being raised upon some other independent basis which is precisely what SIMMONS has done. Nor does it affect the appropriate FAA regulations contained in Title 49 C.F.R. Part 25.

42 U.S.C. §4601 et. seq. is administered by the United States Department of Transportation under 49 C.F.R. Part 25. Part 25 is applicable to the FAA by force of 49 C.F.R. §25.7. The "guidelines" set out in 42 U.S.C. §4651 are contained in 49 C.F.R. Subpart I §§25.251 to 25.267. Under 49 C.F.R. §25.21 of the FAA regulations an applicant is specifically given standing to enforce the regulations concerning real property acquisition which are set out in Subpart I. Nowhere in the regulations is there any language which specifically prohibits the appeals process as to Subpart I. A specific prohibition is necessary or the action will be presumed to be reviewable. *Association of Data Processing Service Org., Inc., supra* at 831, 832.

The regulations differ from the regulations under Title 24 which are administered by the Department of Housing and Urban Development. The HUD regulations under 24 C.F.R. §42.127 specifically deny an applicant standing to enforce sections of the regulations dealing with real property acquisitions and which are in substance, the same "guidelines" as are set out in 42 U.S.C. §4651.

Accordingly, the FAA regulations Subpart I, raise a right to review. The FAA response to SIMMONS' letters of 1964, 1967, 1971, 1982 and 1983, denying any liability or any duty to SIMMONS for acquisition of his real property, effectively exhausted SIMMONS' administrative remedies by denying him his right to administrative review. Thus the question is ripe for judicial review under 5 U.S.C. §§701 and 702.

It is, therefore, submitted that for the District Court to have dismissed the complaint under F.R.C.P. §12(b)(1) and (6) was improper and an abuse of discretion because there are facts which

have been presented upon which it is possible to find in favor of SIMMONS.

To allow dismissal of SIMMONS' complaint based upon the objections raised by the lower courts would be wholly unjust and would plunge the issue of sovereign immunity as a jurisdictional bar back into the murk from which it was raised through the efforts of the Justice Department and Congress by the enactment of Pub. L. 94-574 and Pub. L. 96-562.

**Conclusion & Prayer**

There now exists a conflict in the decisions of this Court and the Court of Appeals of the Second Circuit and the laws of the United States as are set out in the United States Code with reference to whether an action for quiet title or ejectment is barred by sovereign immunity. Under the particular facts set forth, this case should be remanded to the District Court for a hearing on the merits, or alternatively, for a stay of those proceedings which will necessarily hinge upon the outcome of the proceedings in the State Court until a final determination is had there.

Respectfully Submitted,

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By_____
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*Pro Se*

No.

In the

# Supreme Court of the United States

October Term, 1983

AUGUSTUS J. SIMMONS,
*Petitioner*,

v.

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Federal Aviation Administration;
STATE OF CONNECTICUT;
CONNECTICUT DEPARTMENT OF TRANSPORTATION;
J. WILLIAM BURNS, Commissioner,
Connecticut State Department of Transportation,
*Respondents*.

## APPENDIX

## APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 10th day of February, one thousand nine hundred and eighty-four.

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AUGUSTUS J. SIMMONS,
*Plaintiff-Appellant,*

v.

ARTHUR B. POWERS,
Commissioner of Department of Transportation,
*Defendant-Appellee.*

---

AUGUSTUS J. SIMMONS,
*Plaintiff-Appellant,*

v.

UNITED STATES OF AMERICA, ELIZABETH DOLE,
Secretary of United States Department of Transportation,
FEDERAL AVIATION ADMINISTRATION,
J. LYNN HELMS, Administrator,
STATE OF CONNECTICUT, J. WILLIAM BURNS,
Commissioner of Connecticut Department of Transportation
and CONNECTICUT DEPARTMENT OF
TRANSPORTATION,
*Defendants-Appellees.*

---

No. 83-6257

A petition for a rehearing having been filed herein by plaintiff-appellant, Augustus J. Simmons, *pro-se*,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

A. Daniel Fusaro, *Clerk*

by Francis X. Gindhart,
*Chief Deputy Clerk*

## APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of December, one thousand nine hundred and eighty-three.

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Present:

HONORABLE WILFRED FEINBERG
*Chief Judge*

HONORABLE HENRY J. FRIENDLY

HONORABLE JAMES L. OAKES
*Circuit Judges.*

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AUGUSTUS J. SIMMONS,
*Plaintiff-Appellant,*

v.

ARTHUR B. POWERS, etc.,
*Defendant-Appellee.*

---

AUGUSTUS J. SIMMONS,
*Plaintiff-Appellant,*

v.

UNITED STATES OF AMERICA, et al.,
*Defendant-Appellee.*

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No. 83-6257

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed as follows:

1. This appeal arises out of a dispute over title to and use of land adjacent to Bradley International Airport. It concerns two actions, filed by appellant in the United States District Court for the District of Connecticut, and directed against various state and federal defendants. The complaint in the first case, Civ. No. H-81-778, was filed in October 1981, and subsequently amended. On February 7, 1983, Judge Cabranes granted the federal defendants' motion to dismiss. Simmons appealed, and this court, by order dated June 9, 1983, dismissed the appeal for lack of jurisdiction because the dismissal of the claim against the federal defendants did not constitute a final judgment of the district court. We stated that, to pursue the appeal, Simmons would have to seek the entry of a final judgment as to the federal defendants, or await the determination of the claims against the state defendants.

2. On March 22, 1983, appellant filed the complaint in the second case, Civ. No. H-83-225. On May 23, 1983, Judge Cabranes granted a motion by the State of Connecticut to consolidate both cases. On August 16, 1983, Judge Cabranes dismissed the complaints in the consolidated actions. Simmons now appeals from that dismissal. We agree with Judge Cabranes that the doctrine of res judicata bars the reassertion of these claims, already litigated in state courts. Simmons v. Wetherall, 430 A.2d 1296 (Conn. 1980).

3. The judgment of the district court is affirmed.

WILFRED FEINBERG, *Chief Judge*

HENRY J. FRIENDLY,

JAMES L. OAKES, *Circuit Judges*.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

## APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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AUGUSTUS J. SIMMONS,

v.

UNITED STATES OF AMERICA, ELIZABETH DOLE, Secretary of United States Department of Transportation; FEDERAL AVIATION ADMINISTRATION; J. LYNN HELMS, Administrator; STATE OF CONNECTICUT; J. WILLIAM BURNS, Commissioner of Connecticut Department of Transportation

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AUGUSTUS J. SIMMONS

v.

ARTHUR B. POWERS, COMMISSIONER, DEPARTMENT OF TRANSPORTATION

No. H 81-778
and No. 83-225

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**Judgment**

These consolidated actions having come on for consideration of the Defendants' Motions to Dismiss before the Honorable Jose A. Cabranes, United States District Judge; and,

The Court having considered the full record of the case including the applicable principles of law, and the Court having filed its endorsements on August 16, 1983, granting Defendants' motions,

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the Defendant dismissing the Plaintiff's complaints.

Dated at Hartford, Connecticut, this 24th day of August, 1983.

SYLVESTER A. MARKOWSKI,
*Clerk,* United States District Court

By_____
John K. Henderson, Jr.
*Deputy in Charge*

## APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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AUGUSTUS J. SIMMONS,
*Plaintiff.*

v.

J. WILLIAM BURNS, AS HE IS THE COMMISSIONER OF THE CONNECTICUT DEPARTMENT OF TRANSPORTATION, AND J. LYNN HELMS, AS HE IS THE ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION
*Defendants.*

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No. 81-778
Appeal No. 83-5141

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**PLAINTIFF'S MOTION FOR "FINAL DECISION" ON WITHHOLDING OF FEDERAL FUNDS FOR ALL AIRPORT DEVELOPMENT AT BRADLEY INTERNATIONAL AIRPORT**
**(Preliminary Injunction)**

DENIED as moot, in view of the court's disposition of the case. *See* the court's endorsement order (filed Aug. 16, 1983) of the federal defendants' motion to dismiss and the court's endorsement order (filed Aug. 17, 1983) of the state defendants' motion to dismiss. It is so ordered.

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José A. Cabranes, *U.S.D.J.*
August 17, 1983, Hartford, CT

## APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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AUGUSTUS J. SIMMONS

v.

UNITED STATES OF AMERICA, FEDERAL AVIATION ADMINISTRATION, J. LYNN HELMS, Administrator, Federal Aviation Administration, STATE OF CONNECTICUT, CONNECTICUT STATE DEPARTMENT OF TRANSPORTATION, and J. WILLIAM BURNS, Commissioner, Connecticut State Department of Transportation

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No. H 81-778 and
No. H 83-255

### ORDER

Upon a review of the full record of this case, including the Government's Memorandum of Law in Support of Motion to Dismiss (filed Aug. 4, 1983) and oral argument on the instant motion heard in open court on August 15, 1983, the court concludes that the complaint in Civ. No. H 83-225 sounds in either ejectment or trespass; that if the former, the complaint is barred by sovereign immunity, *see Malone v. Bowdoin,* 369 U.S. 643 (1962); and that if the latter, whether the complaint is brought under the Federal Tort Claims Act, 28 U.S.C. §2671 *et seq.*, or the Tucker Act, 28 U.S.C. §1346 (a)(2), the action is barred by the statute of limitations contained in 28 U.S.C. §2401, as already applied by this court to the facts in this case in Civ. No. H 81-778, Ruling on Federal Defendants' Motion to Dismiss (filed Feb. 7, 1983). Accordingly, in Civ.

No. H 83-225, the federal defendants' motion to dismiss is GRANTED. It is so ordered.

José A. Cabranes, *U.S.D.J.*
August 16, 1983, Hartford, Conn.

**ORDER**

Based upon the full record of this case, including the State Defendants' Memorandum in Support of Its [sic] Motion to Dismiss the Complaints (filed June 28, 1983), the exhibits appended thereto, and the arguments of counsel in open court on August 15, 1983, the court concludes that these cases effectively constitute appeals from state court judgments and litigation of them before this forum is barred by the doctrine of *Rooker v. Fidelity Trust Co.*, 261 U.S. 114 (1923), that collateral attack in this court on the judgments of the Connecticut Superior Court is barred by 28 U.S.C. §1738, and that, in any event, the prior adjudication of these claims in *Simmons v. Wetherall,* 180 Conn. 587 (1980) bars their reassertion, because of the doctrine of res judicata. For all of the foregoing reasons, the state defendants' motion to dismiss the complaints in Civ. Nos. H 81-778 and H 83-225 is GRANTED. It is so ordered.

By _____
José A. Cabranes, *U.S. District Judge*
August 16, 1983, Hartford, Conn.

## APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 9th day of June, one thousand nine hundred and eighty-three.

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Present:

HONORABLE WILFRED FEINBERG,
*Chief Judge*

HONORABLE HENRY J. FRIENDLY

HONORABLE RALPH K. WINTER
*Circuit Judges.*

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AUGUSTUS J. SIMMONS,
*Plaintiff-Appellant,*

— against —

UNITED STATES OF AMERICA, FEDERAL AVIATION ADMINISTRATION, et al.
*Defendants-Appellees.*

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No. 83-6043

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Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the appeal from the judgment of said District Court be and it hereby is dismissed for lack of jurisdiction.

1. This appeal arises out of a dispute over title to and use of land adjacent to Bradley International Airport in Connecticut that has been going on between appellant and the governments of the United States and Connecticut for many years. The third amended complaint in the instant case against various federal and state defendants was filed in November 1982. In an opinion dated February 7, 1983, Judge Jose A. Cabranes dismissed all the counts that he found to be directed against the federal defendants, finding that count one was barred by the applicable statute of limitations and that count three failed to state a claim for relief.

2. Because the claims against the state defendants are still pending before the district court, the dismissal of the claims against the federal defendants is not a final judgment, and cannot be appealed, unless the district court determines that "there is no just reason for delay" and expressly directs the entry of a final judgment. Fed. R. Civ. P. 54(b). Judge Cabranes did not do so in his opinion of February 7. This court is therefore without jurisdiction to hear this appeal, which is dismissed without prejudice. Appellant may seek the entry of final judgment as to the federal defendants in the district court, or he may await the final determination of his remaining claims before appealing all claims to this court.

3. Shortly before oral argument, appellant also moved in this court for a preliminary injunction "against project applications for airport development." The relief sought is the "withholding of federal funds for all airport development at Bradley International Airport per 49 USC 1716 (c) until such time as clear title to 'clear zone' is fully and adequately required." Judge Cabranes denied a request for similar relief in the district court on May 16, 1983, on the ground that relief was sought against the federal defendants

only, as to whom the complaint had already been dismissed. In view of our disposition of the main appeal, this motion is also remanded without prejudice to the district court so that when a final judgment is entered, the entire matter may be addressed by this court at the same time.

WILFRED FEINBERG, *Chief Judge*

HENRY J. FRIENDLY

RALPH K. WINTER, *Circuit Judges.*

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

## APPENDIX G

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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AUGUSTUS J. SIMMONS

v.

UNITED STATES OF AMERICA, FEDERAL AVIATION ADMINISTRATION, J. LYNN HELMS, Administrator, Federal Aviation Administration, STATE OF CONNECTICUT, CONNECTICUT STATE DEPARTMENT OF TRANSPORTATION, and J. WILLIAM BURNS, Commissioner, Connecticut State Department of Transportation

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No. H 81-778

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RULING ON THE FEDERAL DEFENDANTS' MOTION TO DISMISS

JOSÉ A. CABRANES, *District Judge:*

This procedurally convoluted action arises out of a dispute between plaintiff and various defendants concerning the use of several parcels of land in the town of East Granby, Connecticut. On November 8, 1982, plaintiff filed his Third Amended Complaint, and on December 21, 1982 the federal defendants (the United States of America, the Federal Aviation Administration, and J. Lynn Helms as Administrator of the Federal Aviation Administration) filed a motion to dismiss the claims asserted against them, pursuant to Rule 12(b) (1) and (6), Fed. R. Civ. P. Because this court concludes that "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim [against these defen-[2]

dants] which would entitle him to relief," *Conley* v. *Gibson*, 355 U.S. 41, 45-46 (1957), the motion to dismiss must be granted.

## I.

The first count of the Third Amended Complaint alleges a claim under the Federal Tort Claims Act, 28 U.S.C. §§2671 *et seq*. The pertinent allegations of count one are that the "FAA has placed a middle marker on Parcel C [of which plaintiff alleges he is the owner] and an Instrument Landing System," Third Amended Complaint, ¶ 30; that "the United States Government and the FAA have ousted the Plaintiff from possession of this land since 1964," ¶ 33; and that "the United States and the FAA have never compensated the Plaintiff for their use of Parcels A and C," ¶ 34. According to plaintiff, the instrument landing system was emplaced in 1960, ¶ 6, the middle marker in 1974, ¶ 7.

The statute of limitations for the Federal Tort Claims Act is 28 U.S.C. §2401(b), which provides in pertinent part that a tort claim against the United States will be barred unless "presented in writing to the appropriate Federal Agency within two years after such claim accrues...." It is undisputed that plaintiff did not commence this action until 1981. Plaintiff does not allege that he filed any federal court action or agency claim before that time.

Plaintiff contends, however, that his claim is not time-[3]barred. That contention derives from plaintiff's reading of two cases, *United States* v. *Dickinson*, 331 U.S. 745 (1947), and *United States* v. *One 1961 Red Chevrolet Impala Sedan*, 457 F.2d 1353 (5th Cir. 1972). This court is not persuaded that either case cited is on point.

In *Dickinson*, the United States had constructed a dam, and as a result the plaintiff's land was periodically flooded. The dam was completed in 1936, the first flood occurred in 1937, more extensive flooding took place in 1938, and the plaintiff brought suit in 1943; a six-year statute of limitations was applicable. The Supreme Court held that the action was not time-barred. In *Dickinson*, the plaintiff argued that the Government's action was, before 1938, ambiguous: before the first flood occurred, there was no indication that a

taking had occurred or would occur; and before the extensive flood of 1938, it was still uncertain that the Government's intrusion upon the plaintiff's land was sufficient to constitute a taking, or, assuming that there was a taking, it was too soon to determine the extent thereof. The *Dickinson* plaintiff argued, and the Supreme Court agreed, that it was not until 1938 that the fact and the extent of the taking were clear. As Justice Frankfurter, writing for the court, put it: "An owner of land flooded by the Government would not unnaturally postpone bringing a suit against the Government for the flooding until the consequences of inundation have so manifested themselves that a final account may be[4] struck," *United States* v. *Dickinson, supra,* 331 U.S. at 749. In the case at bar, however, the Third Amended Complaint can only be read as stating that the Government's alleged tort was complete in 1974. According to the complaint, the alleged tort was neither uncertain nor ambiguous at that time; its extent was apparent; and nothing is alleged to have happened between 1974 and 1981 that changed the nature or extent of the alleged tort.

In *One 1961 Red Chevrolet,* the Fifth Circuit held that, where a change of law creates a new right, a cause of action may, for limitation purposes, accrue at the time of that change of law rather than when the alleged wrong occurred. In the case at bar, however, plaintiff has not alleged any change in the general law. Rather, he has simply alleged that a prior adjudication of his rights with respect to the parcels in question occurred in 1980. Clearly, an application of law, albeit one that changes the legal relations between two parties, is not the same thing as a change in the law. Thus, *One 1961 Red Chevrolet* — which, at any rate, represents the law of a circuit other than our own — has no bearing on the case before this court today.

In short, count one of the Third Amended Complaint is barred by 28 U.S.C. §2401(b) and is accordingly dismissed.

## II.

In count three of the Third Amended Complaint, plaintiff alleges numerous violations of unspecified "Federal law," ¶¶ [5]40-46, 49-

51, and some specific violations of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§4601 *et seq.* Where violations of that Act are alleged, plaintiff claims the FAA was derelict in fulfilling its statutory obligations in dealing with the State of Connecticut, ¶¶ 47-48, 52-54.

The Government contends that a private right of action will not lie against it to compel fulfillment of such obligations. While this question has not yet been presented to the Court of Appeals for the Second Circuit, those courts of appeals that have considered this issue have unanimously concluded that the "plain language," *Fountain* v. *Metropolitan Atlanta Rapid Transit Authority,* 678 F.2d 1038, 1045 n.13 (11th Cir. 1982), of 42 U.S.C. §4602(a) precludes such a right. *See Fountain* v. *Metropolitan Atlanta Rapid Transit Authority, supra; Roth* v. *United States Department of Transportation,* 572 F.2d 183, 184 (9th Cir. 1978); *Rhodes* v. *City of Chicago,* 516 F.2d 1373, 1377-1378 (7th Cir. 1975); *Will-Tex Plastics Manufacturing, Inc.* v. *Department of Housing and Urban Development,* 345 F.Supp. 654 (E.D.Pa. 1972), *aff'd* 478 F.2d 1399 (3rd Cir. 1973). The exception cited by plaintiff as applicable where a plaintiff is a third-party beneficiary to a contract between federal and state governments is clearly without relevance here, where plaintiff has not claimed to be a third-party beneficiary — indeed, where such a claim would be contrary to the entire thrust of the complaint.[6]

Thus, count three of the Third Amended Complaint fails to state a claim for relief cognizable under 42 U.S.C. §§4601 *et seq.* and is accordingly dismissed.

## III.

The federal defendants have also moved to dismiss count five of the Third Amended Complaint. Count five concerns enforceability of a stipulation entered into by plaintiff and the State of Connecticut. It does not appear to this court that count five runs against the federal defendants, and therefore that portion of the federal defendants' motion to dismiss that attacks count five is denied as

moot, without prejudice to renewal if it should appear hereafter that plaintiff means count five to run against the federal defendants.

## IV.

In summary, the federal defendants' motion to dismiss the Third Amended Complaint insofar as it states claims against them is granted with respect to count one, granted with respect to count three, and denied as moot with respect to count five, without prejudice to renewal. Counts two and four of the Third Amended Complaint do not state claims against any of the federal defendants.

It is so ordered.

Dated at Hartford, Connecticut, this 7th day of February, 1983.

José A. Cabranes
*United States District Judge*

## APPENDIX H

### Statutes and Regulations Involved, Cited in Pertinent Part:

5 U.S.C. §701. **Application; definitions**

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or
(2) agency action is committed to agency discretion by law.

* * *

5 U.S.C. §702. **Right of review**

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

28 U.S.C. §1346. **United States as defendant**

(a) The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of:

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitu-

tion, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978.

* * *

(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

28 U.S.C. §2401. **Time for commencing action against United States**

(a) Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun

within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

28 U.S.C. §2409a. **Real property quiet title actions**

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(d) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(e) A civil action against the United States under this section shall be tried by the court without a jury.

(f) Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

(g) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.

28 U.S.C. §2674. **Liability of United States**

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

* * *

42 U.S.C. §4602. **Effect upon property acquisition**

(a) The provisions of section 4651 of this title create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971.

42 U.S.C. §4621. **Declaration of policy**

The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

42 U.S.C. §4627. **State required to furnish real property incident to Federal assistance (local cooperation)**

Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or

project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 4630 and 4655 of this title. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance.

42 U.S.C. §4628. **State acting as agent for Federal program**

Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this chapter, be deemed an acquisition by the Federal agency having authority over such program or project.

42 U.S.C. §4630. **Requirements for relocation payments and assistance of Federally assisted program; assurance of availability of housing**

Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, unless he receives satisfactory assurances from such State agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 4622, 4623, and 4624 of this title;

(2) relocation assistance programs offering the services described in section 4625 of this title shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be

available to displaced persons in accordance with section 4625(c)(3) of this title.

42 U.S.C. §4633. **Regulations and procedures**

**(a) Consultation among Federal agencies**

In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the head of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.

**(b) Fair and reasonable administration; prompt payments; review**

The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

**(c) Additional regulations and procedures**

The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this chapter, as he deems necessary or appropriate to carry out this chapter.

42 U.S.C. §4651. **Uniform policy on real property acquisition practices**

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and

summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 258a of Title 40, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by subchapter II of this chapter will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it

necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

42 U.S.C. §4653. **Expenses incidental to transfer of title to United States**

The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

42 U.S.C. §4654. **Litigation expenses**

**(a) Judgment for owner or abandonment of proceedings**

The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

**(b) Payment**

Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

**(c) Claims against the United States**

The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of Title 28, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

42 U.S.C. §4655. **Requirements for uniform land acquisition policies; payments of expenses incidental to transfer of real property to State; payment of litigation expenses in certain cases.**

Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after January 2, 1971, unless be receives satisfactory assurances from such State agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 4651 of this title and the provisions of section 4652 of this title, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 4653 and 4654 of this title.

49 U.S.C. §2208. **Submission and approval of project grant applications**

**(b) Approval**

(1) No project grant application may be approved by the Secretary unless the Secretary is satisfied that—

(A) the project is reasonably consistent with plans (existing at the time of approval of the project) of public agencies authorized by the State in which such airport is located to plan for the development of the area surrounding the airport and will contribute to the accomplishment of the purposes of this chapter;

(B) sufficient funds are available for that portion of the project costs which are not to be paid by the United States under this chapter;

(C) the project will be completed without undue delay;

(D) the sponsor which submitted the project grant application has legal authority to engage in the project as proposed; and

(E) all project sponsorship requirements prescribed by or under the authority of this chapter have been or will be met.

(2) No project grant application for airport development may be approved by the Secretary unless the sponsor, a public agency, or the United States or an agency thereof holds good title, satisfactory to the Secretary, to the landing area of the airport or site therefor, or gives assurance satisfactory to the Secretary that good title will be acquired.

(3) No project grant application for airport development may be approved by the Secretary which does not include provision for (A)

land required for the installation of approach light systems; (B) touchdown zone and centerline runway lighting; or (C) high intensity runway lighting, when it is determined by the Secretary that any such item is required for the safe and efficient use of the airport by aircraft, taking into account the type and volume of traffic utilizing the airport.

(4) No project grant application for airport development may be approved unless the Secretary is satisfied that fair consideration has been given to the interest of communities in or near which the project may be located.

* * *

(6)(A) No project grant application for airport development involving the location of an airport, an airport runway, or a major runway extension may be approved by the Secretary unless the sponsor of the project certifies to the Secretary that there has been afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with the goals and objectives of such planning as has been carried out by the community.

(B) When hearings are held under subparagraph (A) of this paragraph, the project sponsor shall, when requested by the Secretary, submit a copy of the transcript to the Secretary.

* * *

(8) Notwithstanding any other provision of law, the Secretary may approve an application for an airport development project (other than an airport development project to which paragraph (7)(A) applies) at an existing airport without requiring the preparation of an environmental impact statement with respect to noise for such project if—

(A) completion of the project would allow existing aircraft operations at the airport that involve aircraft that do not comply with the noise standards prescribed for "stage 2" aircraft in section 36.1 of title 14, Code of Federal Regulations, to be replaced by aircraft operations involving aircraft that do comply with such standards; and

(B) the project complies with all other statutory and administrative requirements imposed under this chapter.

(9) In establishing priorities for the distribution of funds available pursuant to section 2206 of this title, the Secretary may give priority to approval of projects that are consistent with integrated airport system plans.

**(d) Acceptance of certification**

The Secretary is authorized in connection with any project to require a certification from a sponsor that such sponsor will comply with all of the statutory and administrative requirements imposed on such sponsor under this chapter in connection with such project. Acceptance by the Secretary of a certification from a sponsor may be rescinded by the Secretary at any time. Nothing in this subsection shall affect or discharge any responsibility or obligation of the Secretary under any other Federal law, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), section 4(f) of the Department of Transportation Act (49 U.S.C. 1652) [49 U.S.C. 1653(f)], title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000b) [42 U.S.C. 2000d et seq.], title VIII of the Act of April 11, 1968 (42 U.S.C. 3601 et seq.), and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

24 C.F.R. §42.127 **Effect of these regulations on acquisition.**

(a) The provisions of §§42.103, 42.107, 42.109, 42.111, 42.113, and 42.115 create no rights or liabilities and shall not affect the validity of any property acquisition by purchase or condemnation.

(b) Nothing in these regulations shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or of damage not in existence immediately prior to January 2, 1971.

49 C.F.R. §25.7 **Delegations of authority.**

(a) Except as provided in §25.153, the functions, powers, and duties of the Secretary of Transportation with respect to the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" are delegated to:

91) The Assistant Secretary for Administration with respect to programs administered directly by the Office of the Secretary; and

(2) The head of each of the following operating administrations with respect to programs administered by their respective organizations:

(ii) Federal Aviation Administration.

(b) Each officer to whom authority is delegated by paragraph (a) of this section may redelegate and authorize successive redelegations of that authority within the organization under his jurisdiction.

49 C.F.R. §25.21 **Appeals.**

(a) An applicant for a payment under Subparts E, F, G and I who is aggrieved by an agency's determination as to the applicant's eligibility for payment or the amount of the payment may appeal that determination in accordance with the procedures established by the agency concerned under paragraph (b) of this section.

(b) Each agency concerned shall establish procedures for reviewing appeals by aggrieved applicants for payments under this part. The procedures shall ensure that:

(1) Each appellant applicant has the opportunity for oral presentation;

(2) Each appeal will be decided promptly and the applicant is informed of the decision in writing;

(3) Each appeal decision will include a statement of the reasons upon which it is based;

(4) The agency retains all documents associated with each appeal; and

(5) Each appellant applicant has a right of final appeal to the head of the agency concerned.

49 C.F.R. §25.41 **Scope.**

This subpart prescribes requirements governing the administration of real property acquisition and relocation assistance for displaced persons for projects which are part of a Federal program administered by the Department of Transportation.

49 C.F.R. §25.45 **Determinations; acquisition of real property.**

No DOT official may approve a Federal project to which this part applies and which will result in the acquisition of real property until he determines that adequate provisions have been made to:

(a) Fully comply with the requirements of Subpart I, of this part; and

(b) Inform the public of the acquisition policies, requirements, and payments which will apply to the project.

**Subpart C—Requirements for Federally-Assisted Projects**

49 C.F.R. §25.51 **Scope.**

This subpart prescribes requirements governing the administration of real property acquisition and relocation assistance for displaced persons for projects which are part of a Federally-assisted program administered by the Department of Transportation.

49 C.F.R. §25.53 **Preliminary requirements.**

Before a State agency begins a Federally-assisted project to which this part applies, it shall:

(a) Make preliminary investigations of relocation problems by visual inspection of the proposed project area and by community and other sources where available to determine:

(1) The approximate number of persons that will be displaced;

(2) The number of businesses and farm operations that will be displaced;

(3) The characteristics of the individuals and families that will be displaced with respect to racial and ethnic identification, age, number of children, income level, nature of occupancy and tenure of residency.

(4) The probable availability of comparable replacement dwellings.

(b) Submit to the appropriate DOT official:

(1) A statement of the basis for the data required by paragraph (a) of this section;

(2) A statement of the displacement problems involved at each identifiable location, along with possible solutions; and

(3) If the data required by paragraph (a) of this section disclose that the comparable replacement dwellings will be insufficient to meet the displacement needs of the project, a description of the actions proposed to insure that the necessary dwellings will be available in advance of any displacement.

If a public hearing is held concerning the project, the State agency shall submit the information required by paragraph (b) of this section in advance of that hearing. Where prepared, the information

shall be set forth in an environmental impact statement or in a negative declaration.

49 C.F.R. §25.55 **Relocation plan required.**

No DOT official may authorize a State agency to proceed with any phase of a Federally-assisted project to which this part applies until the State agency has submitted a relocation plan to him for approval. The plan shall include:

(a) An inventory of the characteristics and needs of persons to be displaced. This inventory may be based upon a representative sampling process rather than a complete occupancy survey.

(b) An estimated inventory of currently available comparable replacement dwellings. The inventory shall set forth for each dwelling the type of house or building, state of repair, number of rooms, type of neighborhood, proximity of public transportation, schools, and commercial shopping areas, and distance to any pertinent social institutions, such as religious and community facilities.

(c) An analysis of the information required by paragraphs (a) and (b) of this section which:

(1) Discusses relocation problems and possible solutions;

(2) Provides an analysis of Federal, State, and community programs currently in operation in the project area which will affect the availability of housing;

(3) Provides detailed information on concurrent displacement and relocation by other governmental agencies or private concerns;

(4) Describes the methods to be used to relocate displaced persons; and

(5) Explains the amount of lead time necessary to carry out a timely, orderly, and humane relocation program.

(6) Sets forth the results of consultation held under §25.29

49 C.F.R. §25.57 **Assurances required; displacement of persons.**

(a) No DOT official may approve a Federally-assisted project to which this part applies and which results in the displacement of any person until the head of the State agency provides that official with satisfactory written assurances that after January 1, 1971;

(1) It provides fair and reasonable relocation payments to displaced persons as required by Subparts E, F, and G of this part;

(2) It provides relocation assistance programs for displaced persons offering the services described in Subpart D of this part;

(3) It adequately informs the public of the relocation payments and services which are available under Subparts D, E, F, and G of this part; and

(4) Based on the requirements of §25.53 comparable replacement dwellings are available, or provided if necessary, within a reasonable period of time before any individual or family is displaced. However, the assurances required by this paragraph apply to displacements occurring before July 1, 1972, only to the extent the State agency was able to make the assurances under State law.

(b) No DOT official may authorize a State agency to proceed with any phase of a project if that phase will cause the displacement of any individual or family until that official receives satisfactory, written assurance from the head of the State agency that:

(1) Based on a current survey and analysis of available replacement housing and in considering competing demands for that housing, comparable replacement dwellings will be available within a reasonable period of time prior to displacement, equal in number to the displaced individuals and families that require them; and

(2) The State agency relocation program is realistic and is adequate to provide orderly, timely, and efficient relocation of displaced individuals and families to decent, safe, and sanitary housing available without regard to race, color, religion, sex, or national origin with minimum hardship to those affected.

49 C.F.R. §25.59 **Assurances required; acquisition of real property.**

No DOT official may approve a Federally-assisted project to which this part applies and which results in the acquisition of real property until the head of the State agency concerned provides that official with satisfactory written assurances that after January 1, 1971, it:

(a) Is guided by the requirements of §§25.253, 25.255, 25.257 and 25.259 to the greatest extent practicable under State law and fully complies with all other requirements of Subpart I of this part; and

(b) Adequately informs the public of the acquisition policies, requirements, and payments which apply to the project. However, the assurances required by this section apply to real property acquisitions occuring before July 1, 1972, only to the extent the State agency was able to make the assurances under State law.

49 C.F.R. §25.60 **Monitoring assurances.**

After a State agency provides the assurances under §§25.57 and 25.59 for a Federally-assisted project, the appropriate DOT official shall monitor the activities of the State agency with respect to the project to insure that those assurances are or have been carried out.

## Subpart H—Relocation Assistance Functions Carried Out Through Other Agencies

### 49 C.F.R. §25.231 Authority to carry out relocation assistance through other agencies.

(a) To prevent unnecessary expenses and duplication of activities, an agency concerned that is required to provide relocation services or make relocation payments under this part may carry out any of those functions through the facilities, personnel, and services of the central relocation agency for the area in which the project is located. The appropriate regional area office of the Department of Housing and Urban Development will provide information concerning the services furnished by that agency. (See 39 FR 37374 for a listing of the area offices.)

(b) The agency concerned may carry out its relocation assistance program by contracting with a public or private agency having an established organization for providing relocation services and payments other than the central relocation agency, if:

(1) There is no central relocation agency in the area in which the project is located; or

(2) In the opinion of the agency concerned, the central relocation agency does not have the capacity to furnish the requisite relocation program within the time required by the project's schedule.

### 49 C.F.R. §25.233 Information to be furnished to DOT.

If an agency concerned elects to provide relocation services or make relocation payments through another agency, the agency shall furnish the appropriate DOT official with the following information concerning the other agency:

(a) The name and location of the agency.

(b) An analysis of the agency's present workload and of its ability to perform the requirements of this subpart.

(c) The estimated number and the job titles of relocation personnel of the agency that will provide the relocation assistance for the project.

49 C.F.R. §25.235 **Interagency agreement required.**

If an agency concerned elects to provide relocation services or make relocation payments through another agency, it shall enter into a written agreement with that agency. The agreement must be approved by the appropriate DOT official and contain the following:

(a) An obligation on the part of the other agency to perform the services and make the relocation payments in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and this part.

(b) A requirement that the records required by §25.23 be retained by the other agency or turned over to the agency concerned and that they be retained for a period of at least 3 years after payment of the final voucher on each project, regardless of which agency retains them.

(c) A requirement that the records required by §25.23 be available for inspection by representatives of the Department of Transportation at any reasonable business hour.

(d) If the contract is with a public agency administering another Federal or Federally-assisted program, a description of the financial responsibilities of each program to finance the relocation program required by this part.

(e) A provision acknowledging that only those costs directly chargeable to the Federal or Federally-assisted project are eligible for Federal funds.

(f) A provision for negotiation of major changes that become necessary in the scope, character, or estimated total cost of the work to be performed.

49 C.F.R. §25.237 **Amendment of existing agreements required.**

Each agreement between an agency concerned and another agency for carrying out relocation assistance functions through the other agency that is in effect on June 1, 1971, shall be amended or supplemented as necessary to include the requirements of §25.235. The agency concerned shall furnish the appropriate DOT official with a copy of the amended agreement or the existing agreement and the supplement, as the case may be.

**Subpart I—Acquisition of Real Property**

49 C.F.R. §25.251 **Scope.**

This subpart prescribes requirements for the acquisition of real property in a Federal or Federally-assisted program administered by the Department of Transportation.

49 C.F.R. §25.253 **Real property acquisition practices.**

(a) In acquiring real property, each agency concerned shall to the greatest extent practicable:

(1) Make every reasonable effort to acquire real property expeditiously through negotiation;

(2) Before the initiation of negotiations have the real property appraised and give the owner or his representative an opportunity to accompany the appraiser during inspection of the property;

(3) Before the initiation of negotiations establish an amount which it believes to be just compensation for the real property and make a prompt offer to acquire the property for that amount;

(4) Before requiring any owner to surrender possession of real property:

(i) Pay the agreed purchase price;

(ii) Deposit with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of the property; or

(iii) Pay the amount of the award of compensation in a condemnation proceeding for the property;

(5) If any interest in real property is to be acquired by exercise of the power of eminent domain, institute formal condemnation proceedings and not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property; and

(6) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, offer to acquire that remnant.

(b) In acquiring real property, to the greatest extent practicable an agency may not:

(1) Schedule the construction or development of a public improvement that will require any person lawfully occupying real property to move from a dwelling, or to move his business or farm operation, without giving that person at least 90 days' written notice of the date he is required to move.

(2) If it rents acquired real property to the former owner or tenant for short term or subject to termination by the agency on short notice, charge rent that is more than the fair rental value of the property to a short-term occupier;

(3) Compel an agreement on the price to be paid for the property by:

(i) Advancing the time of condemnation;

(ii) Deferring negotiations, condemnation, or the deposit of funds in court for use of the owner; or

(iii) Taking any other coercive action.

(c) For purposes of paragraph (a)(4)(ii) and (b)(3)(ii) of this section, the word court includes any board, commission or similar body.

§25.255 **Statement of just compensation to owner.**

At the time it makes an offer to purchase real property, the agency concerned shall provide the owner of that property with a written statement of the basis for the amount estimated to be just compensation. To the greatest extent practicable, the statement must include the following:

(a) An identification of the real property and the particular interest being acquired.

(b) A certification, where applicable, that any separately held interest in the real property is not being acquired in whole or in part.

(c) An identification of buildings, structures, and other improvements, including fixtures, removable building equipment, and any trade fixtures which are considered to be part of the real property for which the offer of just compensation is made.

(d) A declaration that the agency's determination of just compensation:

(1) Is based on the fair market value of the property;

(2) Is not less than the agency's approved appraised value of the property;

(3) Disregards any decrease or increase in the fair market value caused by the project for which the property is being acquired; and

(4) In the case of separately held interests in the real property, includes an apportionment of the total just compensation for each of those interests.

(e) In the case of partial taking, the amount of damages, if any, to the remaining real property.